# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JUDY K. FLEISCHER	)
Claimant	)
VS.	)
	) Docket No. 237,296
METROPOLITAN COURT REPORTERS	)
Respondent	)
AND	)
	)
WAUSAU INSURANCE COMPANIES	)
COMMERCIAL UNION INSURANCE COMPANIES	)
Insurance Carriers	)

## ORDER

Respondent and one of its insurance carriers, Commercial Union Insurance Companies, appeal from the preliminary hearing order of Administrative Law Judge Robert H. Foerschler dated January 28, 1999. The Administrative Law Judge granted claimant benefits and ordered payment of those benefits by respondent's insurance carrier, Commercial Union Insurance Companies.

#### ISSUES

Respondent, through its insurance carrier, lists several issues that primarily deal with the appropriate date of accident utilized in this case. Respondent acknowledges claimant suffered accidental injury arising out of and in the course of her employment, with the only issue being which insurance company should pay claimant preliminary benefits.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board must first consider whether it has jurisdiction to consider this appeal. There is no dispute regarding whether claimant suffered accidental injury, or whether claimant's accidental injury arose out of and in the course of her employment. The only dispute deals with what date of accident would be appropriate and which insurance company should pay benefits from this preliminary hearing.

Appeals from preliminary hearings are controlled by K.S.A. 1997 Supp. 44-551, which allows appeals from preliminary hearing awards under K.S.A. 1997 Supp. 44-534a only if it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at preliminary hearing. K.S.A. 1997 Supp. 44-534a lists specific disputed issues, which are considered jurisdictional, including whether claimant suffered an accidental injury, whether the accidental injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Board from preliminary hearing orders.

The issues raised by respondent and its insurance carrier do not fall within the jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a, and the decision by the Administrative Law Judge to order medical treatment did not exceed the Administrative Law Judge's jurisdiction under K.S.A. 1997 Supp. 44-551.

When the only dispute on appeal from a preliminary hearing order deals with which insurance company will pay for a particular treatment, jurisdiction will not be taken from an appeal of that preliminary hearing decision. See <u>Burton v. Electrical Corporation</u>, Docket Nos. 236,797, 236,798, 236,799, and 236,800 (February 1999); <u>Ireland v. Ireland Court Reporting</u>, Dockets Nos. 176,441 and 234,974 (February 1999).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the order of Administrative Law Judge Robert H. Foerschler dated January 28, 1999, remains in full force and effect, and the appeal of the respondent and its insurance carrier, Commercial Union Insurance Companies, should be, and is hereby, dismissed.

#### IT IS SO ORDERED.

Dated this	day of Marcl	า 1999.
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### **BOARD MEMBER**

c: Leah Brown Burkhead, Mission, KS Kip A. Kubin, Overland Park, KS David J. Bogdan, Kansas City, MO Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director